

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**In The Matter of****Amendment of the Commission's Rules  
Regarding Multiple Address Systems**)  
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)**WT Docket No. 97-81****To: The Commission****REPLY COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Reply Comments regarding Comments filed by other participants in response to the Commission's *Further Notice of Proposed Rule Making* ("*Further Notice*")<sup>1/</sup> in the above-captioned proceeding.

**I. REPLY COMMENTS**

1. In its Comments, API implored the Commission to reserve a substantial portion of the 928/952/956 MHz and 932/941 MHz Multiple Address System ("MAS") bands for use by auction-exempt providers of "public safety radio services," including petroleum companies,

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<sup>1/</sup> 64 Fed. Reg. 38617 (July 19, 1999).

pipelines, utilities and railroads. Rather than placing roadblocks before these Critical Infrastructure Industries (“CII”) at every turn, the Commission should be striving to promote the public’s interest in the safe operation of its vital energy and transportation networks by ensuring that adequate spectrum is available *outside of the auction process* to meet the communications requirements of the CII.

2. As shown below, the overwhelming majority of parties that commented on the *Further Notice* shared API’s views, and there is widespread agreement as to the course that the Commission should take with regard to the assignment and licensing of MAS spectrum. Moreover, even those few areas of apparent dispute can be reconciled in a manner that fairly and appropriately addresses the needs of all parties and serves the public interest.

**A. Auctions Should Not Be Instituted in the Existing MAS Bands**

3. API argued in its Comments regarding the *Further Notice* that -- regardless of the nature of the current licensees in the existing MAS bands (such as 928/952/956 MHz) -- it would violate the Budget Act for the Commission to auction *any* spectrum in these bands. This is because: (1) auctions only are permitted where there are mutually exclusive applications; (2) Congress has highlighted the Commission’s affirmative obligation to seek to avoid (not create) mutual exclusivity; (3) the existing MAS bands are licensed on a site-by-site, first-come first-served, prior-coordinated basis, which typically does not result in mutual exclusivity; and

(4) the existing licensing method is efficient and best serves the public interest and, thus, should not be altered.<sup>2/</sup>

4. Many commenting parties expressed similar conclusions. For instance, Itron, Inc. (“Itron”) pointed out that “the technical engineering and frequency coordination procedures that traditionally have pertained to MAS licensing have served utilities and the public well, and they have virtually eliminated mutually exclusive applications in this service except in rare instances in which simultaneous applications are made through different frequency coordinators.”<sup>3/</sup> Likewise, the United Telecom Council (“UTC”) stated that “it is very rare that MAS applications are mutually exclusive, due to the prior coordination requirement and site-by-site licensing.”<sup>4/</sup> Like API, many commenters also asserted that the existing licensing approach should not be amended in order to facilitate the introduction of auctions. In this regard, API agrees with Radscan, Inc. (“Radscan”) that: “While failure to consider measures to *avoid* mutual exclusivity in a given band before commencing to award licenses in that band by auction would be enough to violate Section 309(j), removing or altering measures that already exist [and that effectively avoid mutual exclusivity] in order to *create* mutual exclusivity would be an even more egregious violation.”<sup>5/</sup> API also concurs with those commenters who explained that the auctioning of MAS

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<sup>2/</sup> Comments of API at 9-10.

<sup>3/</sup> Comments of Itron at 4.

<sup>4/</sup> Comments of UTC at 5.

<sup>5/</sup> Comments of Radscan at 5 (emphasis in original).

spectrum licensed for private use would not further the “public interest” objectives set forth in Section 309(j)(3) of the Communications Act.<sup>6/</sup>

5. While still more parties agreed that the Commission lacks authority to impose auctions on the existing MAS bands due to the absence of mutual exclusivity and/or that site-by-site licensing promotes the public interest here,<sup>7/</sup> API is unaware of any comments that noted support for the prospect of geographic licensing or auctions in these bands. Accordingly, API urges the Commission to recognize the inherent logic of the foregoing analysis (which stands unchallenged in the record for this proceeding) and to confirm that the existing MAS bands will continue to be licensed on a site-by-site, *non-auctioned* basis.

**B. Critical Infrastructure Industries are Exempt from Auctions and Must Have Continued Access to MAS Spectrum**

6. The Commission also should affirm -- once and for all -- that CII entities are exempt from any auctions that the Commission may (notwithstanding the aforementioned objections) seek to impose on any new or existing MAS bands. The public safety functions of

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<sup>6/</sup> See Comments of Commonwealth Edison at 8-11; Comments of Consolidated Edison Company of New York, Inc. (“Consolidated Edison”) at 8-11; Comments of Georgia Power Company, Alabama Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric & Power Company (the “Southern Operating Companies”) at 8-12; Comments of Northern States Power Company (“NSP”) at 8-11; Comments of South Carolina Electric & Gas Company (“SCE&G”) at 8-11.

<sup>7/</sup> See Comments of Adaptive Broadband Corporation (“Adaptive Broadband”) at 6; Comments of the Association of American Railroads (“AAR”) at 2; Comments of the American Water Works Association (“AWWA”) at 6; Comments of CellNet Data Systems, Inc. (“CellNet”) at 4-13; Comments of Comsearch at 2; Comments of Corn Belt Power Cooperative (“Corn Belt”) at 7; Comments of Western Resources at 4.

the MAS facilities employed by the CII, including petroleum and natural gas companies, are well documented and beyond dispute.<sup>8/</sup> As Commonwealth Edison succinctly explained, “[o]il and natural gas providers place MAS facilities in their production fields and distribution pipelines to monitor and control operating parameters, which in turn assists in meeting safety and environmental objectives.”<sup>9/</sup> Indeed, one commenter after another has concluded that utilities, pipelines, railroads and other CII entities provide “public safety radio services,” within the meaning of the auction exemption.<sup>10/</sup>

7. Further, API agrees with UTC that, in enacting the Budget Act, Congress “intended these CII entities to have access to new sources of spectrum, like MAS.”<sup>11/</sup> As a practical matter, the “public safety radio services” exemption would be rendered meaningless and of no avail to CII entities if the Commission were to auction all or most of the available MAS spectrum to non-exempt parties. Instead of making such a mockery of the exemption, as well as

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<sup>8/</sup> See, e.g., Comments of API at 3; Comments of AAR at 3-4 and attachments; Comments of AWWA at 3; UTC at 1-2.

<sup>9/</sup> Comments of Commonwealth Edison at 16.

<sup>10/</sup> See, e.g., Comments of Adaptive Broadband at 2-3; Comments of AWWA at 3; Comments of AAR at 3; Comments of Blue Ridge Electric Cooperative at 1; Comments of Commonwealth Edison at 11-18; Comments of Comsearch at 1-2; Comments of Consolidated Edison at 11-18; Comments of Corn Belt at 2; Comments of East Bay Municipal Utility District (“EBMUD”) at 10; Comments of the Southern Operating Companies at 12-18; Comments of NSP at 11-18; Comments of Pacific Gas and Electric (“PG&E”) at 2; Comments of Public Service Company of Colorado at 3-4; Comments of Radscan at 9; Comments of SCE&G at 11-18; Comments of UTC at 6-7; Comments of Western Resources at 3.

<sup>11/</sup> Comments of UTC at 7.

of the Congressional intent that underlies it, the Commission should ensure that the CII will be able to continue licensing needed MAS spectrum on a non-auctioned basis.<sup>12/</sup>

**C. All or Most of the 928/952/956 MHz MAS Bands Should be Designated for “Public Safety Radio Services”**

8. The first step in ensuring continued access to MAS spectrum by auction-exempt entities is to reserve at least a substantial portion of the 928/952/956 MHz MAS bands for exclusive use by these entities. Comsearch, which maintains a database of MAS systems and performs MAS frequency coordinations for its clients, stated as follows in its Comments:

Our MAS database indicates that the majority of licenses in the 928/952/956 MHz [bands] appear to be for private internal communications and that most of these licenses would fall under the broader public safety radio services category. Thus we believe that this category does represent the dominant use of these bands, and therefore allocating these bands to the public safety radio service is justified.

Comments of Comsearch at 2. Many other parties, including API, also urged the Commission to designate all or most of these bands for auction-exempt services.<sup>13/</sup>

9. CellNet, which uses spectrum in the 928/952 MHz MAS band to provide information service offerings to utility company customers, acknowledged its belief that “the

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<sup>12/</sup> See also Comments of Comsearch at 2 (adoption of interpretation of auction exemption set forth in Budget Act Conference Report “will allow companies such as utilities, railroads, and pipelines access to needed spectrum”).

<sup>13/</sup> See, e.g., Comments of AAR at 2; Comments of AWWA at 5-6; Comments of API at 6-11; Comments of Commonwealth Edison at 18-19; Comments of Consolidated Edison at 18-19; Comments of Corn Belt at 3-4; Comments of EBMUD at 12-13; Comments of the Southern Operating Companies at 18-20; Comments of NSP at 18-19; Comments of SCE&G at 18-19; Comments of UTC at 4-7.

record in this proceeding will lead to the conclusion that a substantial number of licensees in the 928/952 MHz band meet the definition of ‘public safety radio service’” and, accordingly, that “it may be appropriate to allocate some of the channels in this band for future licensing only by licensees for public safety radio services.”<sup>14/</sup> CellNet further argued, however that the breadth of such an allocation must be limited unless the exemption is interpreted broadly enough to include the types of services provided by entities such as CellNet.<sup>15/</sup> Similarly, Radscan -- a provider of wireless security alarm monitoring services to central station alarm companies -- asserted that the Budget Act does not require any changes to the eligibility criteria for the 928/952/956 MHz bands, that restricting eligibility to auction-exempt entities would harm incumbent licensees that do not meet the criteria, and that, if these bands are so restricted, the Commission should adopt an expansive definition of “public safety radio services.”<sup>16/</sup>

10. API does not seek to preclude traditional users of the 928/952/956 MHz bands, such as CellNet and Radscan, from continuing to have access to these bands to modify or make reasonable expansions to their existing operations or to implement new systems as warranted by their business needs. At the same time, however, API believes that the designation of a substantial, representative portion of these bands (*i.e.*, at least 70%<sup>17/</sup>) for “public safety radio services” services is necessary: (1) to segregate exempt and non-exempt applicants in the rare

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<sup>14/</sup> Comments of CellNet at 15.

<sup>15/</sup> *Id.*

<sup>16/</sup> Comments of Radscan at 3-10.

<sup>17/</sup> See Comments of API at 7-8 for evidence as to the level of representation of “public safety radio services” in the 928/952/956 MHz MAS bands.

event that mutually exclusive applications are presented; and (2) to ensure that auction-exempt entities will continue to have access to MAS spectrum for the provision of vital safety-related services. To accommodate the needs of non-exempt MAS users, API suggests that the Commission grandfather all incumbent operations in the 928/952/956 MHz bands (with the ability to make reasonable modifications)<sup>18/</sup> and allow all types of applicants to have continued access to any portion of these bands that is not reserved for “public safety radio services.” Alternatively, if the auction exemption is interpreted broadly to include entities such as CellNet and Radscan, an even greater portion of the bands in question (*i.e.*, at least 90%) should be reserved for auction-exempt services so as to accommodate the increased number of MAS users that would be eligible in this pool.

**D. There Must be a Substantial Set-Aside in the 932/941 MHz Band for Critical Infrastructure Industries and Other Auction-Exempt Entities**

11. Regardless of how the Commission opts to proceed with respect to the 928/952/956 MHz MAS bands, the Commission must also act now to make new, unencumbered spectrum available to CII entities to relieve the shortage that has existed for over a decade due to congestion in the existing bands. Toward this end, API and others have continued to challenge the Commission’s tentative conclusions regarding the nature and relevance of the previously-filed 50,000 applications for use of the 932/941 MHz band. Adaptive Broadband, for example, stated that -- based on its sales of MAS equipment to actual customers -- it is “absolutely

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<sup>18/</sup> The same grandfathering rights must, of course, be afforded to *all* CII and other incumbents, ***including those in the 928/959 MHz band.*** See Comments of API at 17-18; Comments of EBMUD at 14; Comments of UTC at 11-12.



convinced that the 50,000 applications were filed by speculators, who were misled by the notorious ‘application mills’ of the time.”<sup>19/</sup> The Commission should not lend credence to this speculation by making it the foundation of an important spectrum allocation decision.

12. The simple truth, borne out time and again by the record amassed in this proceeding, is that there is no measurable or identifiable commercial demand for this spectrum. While dozens of Comments were filed in response to the Commission’s *Further Notice*, the record remains virtually devoid of any evidence that the 932/941 MHz band is sought for anything other than the provision of “public safety radio services.” In short, it is CII entities, state and local governments and other auction-exempt MAS users that most need this spectrum and that will use this spectrum in a manner that best promotes the public interest. Accordingly, the Commission should heed the many commenting parties who urged it to set aside 20 or more channel pairs (or, in some cases, an unspecified but substantial amount of spectrum) in the 932/941 MHz band for “public safety radio services.”<sup>20/</sup>

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<sup>19/</sup> Comments of Adaptive Broadband at 2. Accord Comments of AWWA at 3-5; Comments of API at 13-14; Comments of Corn Belt at 6-10; Comments of UTC at 3.

<sup>20/</sup> See Comments of Adaptive Broadband at 6; Comments of API at 16-17; Comments of AWWA at 1; Comments of Blue Ridge at 1-2; Comments of Commonwealth Edison at 19; Comments of Comsearch at 3; Comments of Consolidated Edison at 19; Comments of Corn Belt at 5; Comments of EBMUD at 12; Comments of Gila Electronics at 1; Comments of Hornfeck Engineering, Inc. at 1; Comments of Idaho Power Company at 1; Comments of Jackson Electric Membership Corporation at 1; Comments of PG&E at 2; Comments of Salt River Project at 1; Comments of the Southern Operating Companies at 20; Comments of NSP at 19; Comments of SCE&G at 19; Comments of UTC at 8-10; Comments of Williams Energy Services at 1.

### III. CONCLUSION

13. API's views regarding this proceeding are best summarized by AWWA, which stated as follows:

It is time for the FCC to stop ignoring commenters to this docket. It is time for the FCC to stop quibbling over the Balanced Budget Act of 1997 and fulfill Congress's intent -- provide an adequate and protected pool of spectrum for critical national infrastructure entities. The FCC's actions over the last seven years have already endangered public safety; it is time for the Agency to step up and actually manage the nation's telecommunications resources, rather than abdicating responsibility to the continuous pursuit of quick cash from mass market telecommunications ventures.

Comments of AWWA at 4-5. It is not too late for the Commission to act responsibly and in the public interest here. The path is clear; the Commission should not be afraid to follow it.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully submits the foregoing Reply Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**THE AMERICAN PETROLEUM  
INSTITUTE**

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